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09/603,174

06/23/2000

Niel Robertson

SERVICE METRICS

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10/06/2003

EXAMINER

GIBBONS, DEL DEO, DOLAN, GRIFFINGER & VECCHIONE
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NEWARK, NJ 07102-5497

BAROT, BHARAT

ART UNIT

PAPER NUMBER

2154

DATE MAILED: 10/06/2003

8

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.
09/603,174

Applicant(s)
Niel Robertson et al.

Examiner
Bharat Barot

Art Unit
2154



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on Jun 23, 2000.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-22 is/are pending in the application.
- 4a) Of the above, claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-22 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claims _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
*See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____ 6) ☐ Other:

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DETAILED ACTION

Specification

1. The title of the invention is not descriptive. A new title is required that is clearly indicative of the invention to which the claims are directed.

Drawings

2. This application has been filed with informal drawings which are acceptable for examination purposes only. Formal drawings will be required when the application is allowed.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) do not apply to the examination of this application as the application being examined was not (1) filed on or after November 29, 2000, or (2) voluntarily published under 35 U.S.C. 122(b). Therefore, this application is examined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

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4. Claims 1-9 are rejected under 35 U.S.C. 102(e) as being anticipated by Sathyanarayan et al (U.S. Patent No. 6,304,904). Sathyanarayan's patent discloses all the limitations for the claims 1-9 recited in the claimed invention.

5. As to claim 1, Sathyanarayan et al teach a method for internet performance monitoring and analysis (figure 1; and column 2 lines 10-47) comprising the steps of: collecting web page object-level data; and measuring access to web page objects (abstract; column 2 lines 35-47; and column 8 lines 5-35).

6. As to claim 2, Sathyanarayan et al teach that the step of measuring further captures non-speed based information including errors during download (firewall check), source of content by IP address (URL), and type of content (image) that an object represents (figure 1; and column 2 lines 10-34).

7. As to claim 3, Sathyanarayan et al teach that the step of collecting further comprises collecting web page object-level data with at least one data collection agent (figure 2).

8. As to claim 4, Sathyanarayan et al teach that the step of measuring utilizes standard HTTP protocol to interact with a web server (column 3 lines 34-47).

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9. As to claims 5-6, Sathyanarayan et al teach that the step of requesting data be transferred from one source to another, wherein the step of requesting occurs automatically (figure 2; and column 2 line 54 to column 3 line 6).

10. As to claim 7, Sathyanarayan et al teach that the step of measuring further comprises parsing and recognizing other objects referenced in a content returned that need to be retrieved as well (figure 2; and column 3 lines 7-20).

11. As to claim 8, Sathyanarayan et al teach that the step of retrieving the other objects referenced in the content (figure 2; and column 3 lines 34-64).

12. As to claim 9, Sathyanarayan et al teach a system for performance monitoring and analysis through a computer network comprising: at least one agent connected to said computer network and under the control of software to: collect the object-level data and measure the access parameters while the collection of the objectlevel data occurs; and a user interface component to receive measurement data from said agent (abstract; fogures 1-2; column 2 line 10 to column 4 line25; and column 8 lines 5-35).

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Claim Rejections - 35 USC § 103(a)

13. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(f) or (g) prior art under 35 U.S.C. 103(a).

14. Claims 10-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sathyanarayan et al (U.S. Patent No. 6,304,904).

15. As to claim 10, Sathyanarayan et al teach a system for performance monitoring and analysis of web pages from a server through a global computer network comprising: a agent located at distributed points throughout said global computer network; said agent being under the control of software to collect object level data and to measure access parameters while the collection of the object-level data occurs; and a monitoring component to receive measurement data from said agent (abstract; figures 1-2; column 2 line 10 to column 4 line25; and column 8 lines 5-35).

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Sathyanarayan et al do not explicitly teach a system for performance monitoring and analysis of web pages from a server through a global computer network comprising: a plurality of agents located at distributed points throughout said global computer network.

However, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to use a plurality of agents located at distributed points throughout said global computer network incorporate with the method of Sathyanarayan et al because doing so would have made the system for performance monitoring and analysis of web pages from a server through a global computer network more efficient and utilizable. Duplicate parts for multiple effects is generally not given patentable weight or would have been obvious for improvements.

16. As to claims 11-22, Sathyanarayan et al teach that means for determining the time for a customer to view a Web page, means for measuring variations a web site's performance by regional location or the network connectivity of the end-user, means for determining a customer's experience by time of day and day of the week, means for determining the origination of Internet related performance problems, means for comparing download performance compared to industry standards or competitive Web sites, means for monitoring download performance changes since the last hardware/software/design investment to the web site, means for monitoring access

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refusals due to traffic overload, means for monitoring the rate that incomplete pages served, means for monitoring performance over time to obtain performance trends as to whether web site access is getting better or worse over time, means for monitoring performance in relation to performance thresholds such as corporate goals and acceptable levels, means for determining web site performance improvements, and means for determining vendor weaknesses contributing to poor Web site performance (abstract; column 4 line 26 to column 7 line 34; and column 8 lines 5-51).

Additional References

17. The following references are cited by the examiner as of general interest.
- a. Landan, U.S. Patent No. 6,564,342.
 - b. Nixon et al, U.S. Patent No. 6,513,060.
 - c. Hoyer et al, U.S. Patent No. 6,263,361.

Contact Information

18. Any inquiry concerning this communication or earlier communications from the examiner should be directed to **Bharat Barot** whose telephone number is **(703) 305-4092**. The examiner can normally be reached on Monday-Friday from 9:30 AM to 6:00 PM.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, **An, Meng-Ai**, can be reached at **(703) 305-9678**. The fax phone numbers for examiner's Art Unit OR Group are **After final response (703) 746-7238, Official response (703) 746-7239, and Unofficial/Draft response (703) 746-7240**.

Any inquiry of general nature or relating to the status of this application should be directed to the group receptionist whose telephone number is **(703) 305-3900**.

Patent Examiner Bharat Barot

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September 23, 2003

Bharat Barot
BHARAT BAROT
PRIMARY EXAMINER